IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CRIMINAL APPEAL NO. 35 OF 2000

Joao Coutinho @ Makod,
S/o Aleluia Coutinho,
R/o Room No.35, Salkad Colony,
Vaddem, Vasco. ... Appellant

versus

S T A T E
as represented by
Officer-in-charge,
Vasco Police Station,
Vasco, Goa. ... Respondent.

Mr. P. P. Singh, Advocate for the Appellant.

Mr. A. P. Lawande, Public Prosecutor for the State.

CORAM: A. S. AGUIAR &
P. V. HARDAS,JJ.

DATED: 19TH FEBRUARY,2002.

ORAL JUDGMENT(PER HARDAS,J.)

The Appellant stands convicted for an offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer Rigorous Imprisonment for life by the learned Sessions Judge, South Goa, Margao, by Judgment dated 13th April, 2000, in Sessions Case No.32 of 1997.

2. We heard Mr. P. P. Singh, the learned Advocate appearing for the Appellant at length. During the argument, while considering the evidence of P.W.11, Dr. Avinash Pujari, it was brought to our notice that P.W.11, Dr. Avinash Pujari, in his cross-examination has admitted "the contents of the stomach did not give even the smell of alcohol". There was no attempt on the part of either the prosecution or did the learned Advocate

appearing for the Appellant obtain any further clarification from P.W.11, Dr. Avinash Pujari on this point. The incident had taken place near the Zuari Bar and after the deceased had consumed alcohol. We find the statement of P.W.11, Dr. Avinash Pujari in conflict with the evidence of the eye witnesses. An attempt had been made to invite our attention to the authoritative books on medicine. Since, there is no effective clarification obtained either by the prosecution or the Accused, we are of the considered opinion that in view of this ambiguity, the statement of P.W.11, Dr. Avinash Pujari, needs to be clarified. Therefore, we are inclined to remand this matter to the learned Trial Court for re-examination of P.W.11, Dr. Avinash Pujari by the prosecution.

3. Mr. P. P. Singh, the learned Advocate appearing for the Appellant/Accused has submitted before us that he does not want to exercise his right of cross-examination. He, however, reserves his right of re-cross-examination after the re-examination.

4. We, therefore, direct the learned Trial Court to summon P.W.11, Dr. Avinash Pujari, and give an opportunity to the prosecution for re-examination of P.W.11, Dr. Avinash Pujari. The re-examination shall only be restricted to the answer given by P.W.11, Dr. Avinash Pujari that "the contents of the stomach did not

give even the smell of alcohol". We further direct the learned Trial Court to complete the re-examination of P.W.11, Dr. Avinash Pujari within a period of 15 days and remit the records of the re-examination along with the original record back to this Court.

5. The record of the Sessions Case No.32 of 1997 be remitted to the learned Trial Court for facilitating the recording of the re-examination of P.W.11, Dr. Avinash Pujari.

6. The Criminal Appeal to be placed for hearing after receipt of the Record and Proceedings from the learned Trial Court.

(A. S. AGUIAR)
JUDGE

(P. V. HARDAS)
JUDGE